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. 7	BEFORE THE	·
8	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CALIFORNIA	
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11	In the Matter of the Accusation Against:	Case No. 2013-162
12	MYRNA LIZ ALIVIO GAGANTE	ACCUSATION
13	1375 Story Court San Jose, CA 95127	
14	Registered Nurse License No. 658854	
15	Nurse Practitioner Certificate No. 17697 Nurse Practitioner Furnishing Certificate No. 17697	
16	Respondent.	
17		
18	Complainant alleges:	
19	PARTIES	
20		brings this Accusation solely in her
	1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Board of Registered Nursing (Board),	
22	Department of Consumer Affairs.	
23	2. On or about June 13, 2005, the Board issued Registered Nurse License Number	
24	658854 to Myrna Liz Alivio Gagante (Respondent). On or about August 31, 2007, the Board	
25	issued Nurse Practitioner Certificate Number 17697 to Respondent. On or about August 27,	
26	2008, the Board issued Nurse Practitioner Furnishing Certificate Number 17697 to Respondent.	
27	Respondent's license and certificates were in full force and effect at all times relevant to the	
28	charges brought herein and will expire on November 30, 2012, unless renewed.	

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### JURISDICTION

- 3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
- 4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY / REGULATORY PROVISIONS

- 6. Code section 2761, subdivision (a), provides that the Board may take disciplinary action against a certified or licensed nurse for unprofessional conduct.
  - 7. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

- "(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.
- "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.
- "(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

- "(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.
- "(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.
- "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

# **COST RECOVERY**

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### CAUSE FOR DISCIPLINE

# (Unprofessional Conduct)

9. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), for unprofessional conduct in that, on or about November 5, 2010, while working as a family nurse practitioner at Pediatric Center for Life in San Jose, California, Respondent saw Michael O., an uncircumcised toddler, for his two-year well-baby examination. During the examination, Respondent unnecessarily and forcibly retracted Michael's foreskin. Michael cried during the procedure and suffered pain with urination for days afterward.

## **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 658854, Nurse Practitioner Certificate Number 17697, and Nurse Practitioner Furnishing Certificate Number

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1	17697, issued to Myrna Liz Alivio Gagante;	
2	2. Ordering Myrna Liz Alivio Gagante to pay the Board of Registered Nursing the	
3	reasonable costs of the investigation and enforcement of this case, pursuant to Business and	
4	Professions Code section 125.3;	
5	3. Taking such other and further action as deemed necessary and proper.	
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7		
8	DATED: // Sptember 6,2012 Home Burn_ for LOUISE R. BAILEY, M.ED., RN	
9	Executive Officer	
10	Board of Registered Nursing Department of Consumer Affairs State of California	
11	Complainant	
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